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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181969
Party	Plaintiff Fetch, Inc.
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Attachments	Fetch Reply re Motion Challenging Designations (Redacted).pdf (5 pages) (57652 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Fetch, Inc.,	:	
	:	
Opposer,	:	
	:	Opposition No. 91181969
v.	:	Directed to App. S.N. 77/151,430
	:	
Societe des Produits Nestle, S.A.,	:	
	:	
Applicant.	:	

REPLY OF OPPOSER FETCH, INC. TO APPLICANT'S RESPONSE TO
OPPOSER'S MOTION CHALLENGING APPLICANT'S DESIGNATIONS
OF INFORMATION AS "TRADE SECRET/COMMERCIALY SENSITIVE"

Opposer Fetch, Inc. ("Opposer"), through its undersigned counsel, files this motion in reply to the response of Applicant Societe des Produits Nestle, S.A. ("Applicant") to Opposer's Motion challenging Applicant's designation of certain responses to Opposer's interrogatories as "Trade Secret/Commercially Sensitive."¹

In its response, Applicant describes its designations in the most general form, conveniently omitting to address the specific interrogatory answers at issue. While claiming that its interrogatory responses will somehow provide Applicant's competitors with "valuable insight into Applicant's financial position, operations, and plans," Applicant has not met its burden of proving why its specific interrogatory responses at issue in this Motion – responses that contain no particulars regarding Applicant's finances, operations, or plans – warrant any confidential designation, much less the highest confidentiality designation available. A review of Applicant's specific responses makes plain the inappropriateness of Applicant's "trade secret/commercially sensitive" designations.

¹ Opposer filed this Reply (and the Motion) confidentially only because Applicant's "trade secret/commercially sensitive" designations currently stand. Consistent with Opposer's position that the designations have been improperly made, Opposer does not believe that any information in the Motion or this Reply is confidential.

As an example of how it could be “harmed” by having its responses not designated as “trade secret/commercially sensitive,” Applicant puts forth a hypothetical where its launch date is made public and Opposer plans concurrent events to “distract” potential customers. Apart from the fact that Opposer does not have any of the ill motives attributed to it by Applicant, Applicant’s hypothetical is inapt, because Applicant has not designated its specific launch date as “trade secret/commercially sensitive.” Instead, it designated as “trade secret/commercially sensitive” merely the fact that it “[REDACTED]” the mark at issue. See Applicant’s Answer to Interrogatory 17, attached as Exhibit A to Opposer’s Motion.

Similarly, in Applicant’s responses to interrogatories regarding Applicant’s marketing materials containing the mark at issue, Applicant’s licensing of the mark at issue, Applicant’s advertising expenditures in connection with the mark at issue, and Applicant’s publicizing and advertising in connection with the mark at issue, Applicant provides no “highly sensitive” information, just simple denials and general statements. Specifically:

- With respect to Applicant’s marketing materials, Applicant has not designated as “Trade Secret/Commercially Sensitive” particular marketing materials, but rather the mere fact that Applicant “[REDACTED]” in the United States. See Applicant’s Answer to Interrogatory 8, attached as Exhibit A to Opposer’s Motion.

- With respect to Applicant’s licensing of the mark at issue, Applicant has not designated as “Trade Secret/Commercially Sensitive” the name of any licensee or the terms of any licensing arrangement; it has made the designation applicable to the basic fact that it “[REDACTED].” See Applicant’s Answer to Interrogatory 9, attached as Exhibit A to Opposer’s Motion.

- With respect to Applicant’s advertising expenditures, Applicant has not designated as “Trade Secret/Commercially Sensitive” particular advertising expenditure figures; it has made

the designation applicable to simple statements that Applicant “[REDACTED]” and that Applicant “[REDACTED]” for use of the mark at issue. See Applicant’s Answer to Interrogatory 10, attached as Exhibit A to Opposer’s Motion.

- With respect to Applicant’s publicizing and advertising efforts, Applicant has not designated as “Trade Secret/Commercially Sensitive” specific details concerning its publicity and advertising activities; it has made the designation applicable to a broad, obvious statement that the goods and services that it intends to sell under the mark at issue will be sold “[REDACTED].” See Applicant’s Answer to Interrogatory 15, attached as Exhibit A to Opposer’s Motion.

As can be seen, the specific statements designated by Applicant as “Trade Secret/Commercially Sensitive” do not in any sense convey “highly sensitive” information.

For the reasons set forth herein and in its Motion, Opposer requests that Applicant be ordered to withdraw its “Trade Secret/Commercially Sensitive” designations.

Respectfully submitted,

Dated: October 3, 2008

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Reply of Opposer Fetch, Inc. to Applicant's Response to Motion Challenging Applicant Societe des Produits Nestle, S.A.'s Designations of Information as "Trade Secret/Commercially Sensitive" to be served by first class mail, postage prepaid, on October 3, 2008, upon Applicant's counsel of record at the following address:

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/Leslie H Smith/
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